IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 233 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANJI HARJIJI THAKOR & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MN BHAVSAR for Appellant(s) : 1 - 2.
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/12/2007

JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the judgment and order dated 10.02.1999 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 32 of 1993 whereby, the appellants were convicted for the offences punishable u/s. 302 r/w. Section 34 of the Indian Penal Code [for short, "the I.P.C."] and Section 135 of the Bombay Police Act [for short, "the B.P. Act"] and acquitted from the offences punishable u/s. 306 and 201 of the I.P.C.. For conviction u/s. 302 of the I.P.C., both the appellants were sentenced to undergo imprisonment for life with fine of Rs.500/- each and in default of payment of fine, simple imprisonment for a further period of two months while for conviction u/s. 135 of the B.P. Act, both the appellants were sentenced to undergo simple imprisonment for one month with fine of Rs.100/- each and in default of payment of fine, simple imprisonment for a further period of fifteen days. Both the sentences were ordered to run concurrently. The appellants were also given the benefit of set-off.

2.0 The facts in brief as brought out by the prosecution are as under;

2.1 The complainant – Manchaji Badarji had two daughters namely, Jasiben and Jarmarben and they were married to the sons of one Thakor Harji namely, Dharji and Ladji respectively about three years prior to the alleged incident in question.

2.2 On 19.10.1992, at about 2200 hrs., while the complainant was in his house, his nephew came and told him that Thakor Harji had informed him that Jasiben had left the matrimonial house. While the said information was being communicated to the complainant, Thakor Harji was standing at some distance away from the house of the complainant. On hearing the said information, the complainant called Thakor Harji and inquired from him about the same, to which he informed that the deceased has committed suicide by jumping into the well.

2.3 Therefore, the complainant and some of his relatives went to the house of Thakor Harji where the dead body of deceased – Jasiben was kept. On noticing the dead body, the complainant felt that the deceased had sustained cut injuries on the right-hand side of the stomach portion as also on the tibia. Apart from that he also noticed injuries on the left hand and head of the deceased.

2.4 On inquiry, the complainant came to know that at around 1700 hrs. on the same day a quarrel had taken place between deceased – Jasiben and her husband – appellant no. 2 herein and that the appellants had inflicted Axe and Knife blows on the deceased on account of which the deceased has expired and that both the appellants were absconding.

2.5 Thereafter, the complainant along with some other persons went to Deesa Rural Police Station and filed a complaint with respect to the aforesaid offence, which came to be registered as I – C. R. No. 284 of 1992. Investigation into the said alleged offence was handed over to P.S.I. - one

Mr. R. P. Rao. The Investigating Officer went to the scene of offence and performed inquest *'panchnama'*. *'Marnottar'* form was filled up and necessary arrangement was made for sending the dead body for performing post-mortem. *'Panchnama'* of the scene of offence was also done. On receipt of the PM note and other Reports, they were kept in the investigation file.

2.6 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the accused persons, they were arrested on 21.10.1992 and necessary formalities to that effect were also done. During the course of interrogation, as the appellants showed willingness to produce the '*muddamal*' weapons – Axe and Knife used in the commission of the alleged offence in question, the same were recovered by way of discovery '*panchnama*' at Exhibit – 30 in the presence of '*panchas*'.

2.7 On completion of the investigation, charge-sheet was filed against the accused persons in the Court of

learned Judicial Magistrate, First Class, Deesa. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Deesa committed the case to the District & Sessions Court, Banaskantha – Palanpur and the same was numbered as Sessions Case No. 32 of 1993. The matter was transferred to the learned Addl. Sessions Judge for disposal on merits. On production of the accused persons, the learned Addl. Sessions Judge framed the charge and as they pleaded not guilty to the said charges, trial was conducted against them.

3.0 The prove the guilt against the accused persons, the prosecution had examined in all ten witnesses namely, PW – 1 Dr. Punmaji Hakmaji Bhati at Exhibit – 11, PW – 2 Manchaji Badraji at Exhibit – 17, PW – 3 Bhikhabhai Ranchhodbhai Patel at Exhibit – 20, PW – 4 Henduji Raimalji Thakor Exhibit – 22, PW – 5 Amthuben Anarji Manchaji at Exhibit – 25, PW – 6 Jarmarben Anarji Manchaji at Exhibit – 24, PW – 7 Bhuptaji Jagmalji at Exhibit – 25, PW – 8 Samraji Raimalji at Exhibit – 26, PW - 9 Laxmanji Mohanji at Exhibit – 27 and PW – 10 Ranjitsinh

Padamsinh Rao at Exhibit – 28.

3.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in the form of complaint at Exhibit – 18, the PM note at Exhibit – 12, the Inquest *'panchnama'* at Exhibit – 8 and the discovery '*panchnama'* at Exhibit – 30.

3.2 On submission of the closing *'purshis'*, the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellants and imposing sentence as stated in the earlier part of this judgment. Hence, the present appeal.

4.0 Mr. M. N. Bhavsar learned Advocate for the appellants has submitted that there is no direct evidence on record to connect the appellants with the crime in question and that the entire case of the prosecution rests upon circumstantial evidence. He has submitted that the cause of

death of the deceased was 'suicide' or an 'accident' and that in no case, it could be said to be an offence of 'murder'. Learned Advocate has submitted that even if we believe that the deceased died a homicidal death, then also the prosecution has failed to establish the chain of circumstances pointing towards the guilt of the appellants. Hence, the appellants are required to be acquitted by granting them the benefit of doubt.

4.1 Learned Advocate for the appellants has contented that from the medical evidence on record, viz. the PM note of the deceased at Exhibit – 12 and the deposition of the Medical Officer – Dr. Punmaji Hakmaji Bhati as PW – 1 at Exhibit – 11, it is proved that the injuries sustained by the deceased were not possible by the infliction of 'knife' blows. Hence, under no circumstances, appellant no. 1 could be held guilty for the alleged offence in question since it has come on record that appellant no. 1 was having a knife while appellant no. 2 was having an Axe in his hand. He has, therefore, submitted that appellant no. 1 may be acquitted by granting him the benefit of doubt.

5.0 Mr. H. L. Jani learned APP has submitted that the appellants, after killing the deceased by inflicting Axe and Knife blows, had threw her into the well so as to create a story that the deceased had committed 'suicide' or that she had died 'accidentally'. He has contented that from the oral as well as documentary evidence available on record, the prosecution has been able to establish the entire chain of circumstances which clearly point towards the guilt of the appellants. Hence, no interference is required by this Court in this appeal.

6.0 Heard learned counsel for the respective parties and perused the entire oral as well as documentary evidence on record. Indisputably, the entire case of the prosecution rests upon circumstantial evidence, as there is no direct evidence on record to connect the appellants with the crime in question. In such case, the prosecution has to prove the entire chain of circumstances pointing towards their guilt. Hence, the question which is required to be considered by this Court is as to whether the prosecution has been able to

prove the entire chain of circumstances pointing towards the guilt of the appellants or not ?

7.0 The prosecution has examined the Medical Officer [Dr. Punmaji Hakmaji Bhati] of Deesa Civil Hospital, who has performed the post-mortem of the deceased, as PW – 1 at Exhibit – 11. In his deposition, he has categorically stated that external injury nos. 1, 2 & 6 were possible by the infliction of Axe or Knife blows and that the other injuries were possible on account of the impact of the body with the Motor or other accessories fitted along with it inside the well. He has further deposed that the said three injuries, viz. injury nos. 1, 2 & 6 were ante-mortem and that all the injuries taken together, including injury nos. 1, 2 & 6, were not possible by a fall in the well.

7.1 From the evidence led by the aforesaid witness, it is established that injury nos. 1, 2 & 6 were sustained by the deceased prior to her fall in the well and that the said injuries were ante-mortem. Therefore, the probability could not be ruled out that the accused persons, after killing the

deceased, had thrown her dead body in the well in order to create a story that the deceased had committed 'suicide' or had died an 'accidental' death. The evidence led by this witness also gets support from the PM note of the deceased at Exhibit – 12. From the PM note, it is evident that no water has been found in the stomach of the deceased at the time of performing post-mortem, meaning thereby, that when the deceased allegedly fell into the well, she was not alive. Further more, no signs of any struggle against death having undergone by the deceased in the well are visible. In that view of the matter, the contention raised by learned Advocate for the appellants that the deceased died a suicidal death or, in that case, an accidental death does not hold any ground and we have no hesitation in holding that the deceased died a homicidal death.

8.0 Once it is established that the deceased died a homicidal death, the question that is now required to be considered by us is as to whether the said three external injuries, which resulted into the death of the deceased, were caused by the alleged infliction of Axe / Knife blows by the

appellants or not ? It is true that both the '*panch*' witnesses to the discovery '*panchnama*' at Exhibit – 30 have not supported the case of the prosecution. However, from the evidence of the Investigating Officer – Ranjitsinh Padamsinh, who has deposed as PW – 10 at Exhibit – 28 and in whose presence the discovery '*panchnama*' at Exhibit – 30 was performed, it is established that '*muddamal*' weapon – Axe was recovered at the instance of appellant no. 2 while *'muddamal'* weapon – Knife was recovered at the instance of appellant no. 1.

8.1 Here, the conduct of the appellants, after the commission of the alleged offence, is required to be noted. From the record, it appears that after committing the alleged offence in question, the appellants had taken the deceased to a nearby Private Hospital for necessary treatment. However, during the course of treatment, the deceased succumbed to her injuries and having realized the same, the appellants took the dead body to their home instead of taking it to the Civil Hospital or informing about it to the Police Station. It has also come on record that after reaching

home, the appellants changed the dress on the dead body and put on another dress and, thereafter, threw it in the well. The said fact is established from the evidence of the Medical Officer who has categorically deposed that at the time when the dead body of the deceased was brought to him for performing post-mortem, a bandage was affixed on the left arm of the deceased showing signs that very recently the deceased was given necessary supplementary treatment. It has also come out from his evidence that the dress on the dead body of the deceased seized before performing post-mortem was completely dry and no blood stains were visible. The said conduct of the appellants clearly establishes that when they realized that the deceased has expired, they tried to hide their guilt by throwing the dead body in the well in order to create a story that the deceased has committed suicide or had died an accidental death.

9.0 The motive behind the commission of the offence is also borne out. It has come on record from the deposition of PW – 1 Manchaji Badraji at Exhibit – 17, PW – 4 Henduji Raimalji Thakor at Exhibit – 22, PW – 5 Amthuben Anarji

Manchaji at Exhibit – 25 and PW – 6 Jarmarben Anarji Manchaji at Exhibit – 24 that the deceased was mentally and physically harassed by the appellants and her in-laws and that every time when she used to come to her parental home complaining about the said mental and physical torture meted out by the appellants and her in-laws, she was sent back to her matrimonial home by consoling that everything would become normal after some time. On this belief, the deceased used to return to her matrimonial home. Thus, it is established that the deceased was constantly tortured, both physically and mentally, at her matrimonial home. Hence, motive behind the offence is also proved beyond doubt.

10.0 It is an established fact that all the three external injuries sustained by the deceased, viz. injury nos. 1, 2 & 6 were ante-mortem and that they were not caused by the fall in the well. It is true that the Medical Officer, who has performed the post-mortem of the deceased, has stated in his deposition that the said three injuries, viz. injury nos. 1, 2 & 6, were possible by the infliction of Axe or Knife

blows. The PM note of the deceased at Exhibit – 12 specifically states that the internal injuries sustained by the deceased were in a 'ruptured' form meaning thereby, that the said injuries were caused on account of the infliction of blows with some hard substance. Now, when it has come on record that the deceased had died on account of the alleged infliction of Axe or Knife blows, it is highly improbable that the said 'ruptured' injuries were caused by the infliction of Knife blows. *'Muddamal'* weapon – Axe being a hard substance, it is highly possible that the said injuries were caused by it.

10.1 Thus, if we consider the PM note of the deceased at Exhibit – 12 in light of the fact that there is no other evidence on record to prove the involvement of appellant no. 1 in the alleged offence in question, it has to be concluded that the said external injuries sustained by the deceased were caused on account of the infliction of Axe blows by appellant no. 2. The said aspect also gets support from the evidence of the Investigating Officer – Ranjitsinh Padamsinh who has deposed as PW – 10 at Exhibit – 28. It is also to be

kept in mind that appellant no. 1 is the brother-in-law of the deceased and that no specific allegations have been made against him by the witnesses with regard to the alleged physical and mental torture meted out to the deceased prior to her death. Considering the entire oral as well as documentary evidence available on record, we are of the opinion that the prosecution has not been able to prove beyond doubt the involvement of appellant no. 1 in the alleged offence in question. Therefore, according to us, the benefit of doubt is required to be given to appellant no. 1, who has already undergone more than 8½ years of imprisonment.

11.0 So far as appellant no. 2 is concerned, we are of the view that the prosecution has cogently established the circumstances on the basis of which the inference of guilt could be drawn against him. All the circumstances point towards the guilt of appellant no. 2 without any reasons for doubt and lead us to the conclusion that within all human probability, the offence was committed by appellant no. 2. Hence, the appeal deserves to be dismissed qua appellant

no. 2 only.

12.0 For the foregoing reasons, the appeal is partly allowed. The impugned judgment and order dated 10.02.1999 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 32 of 1993 is modified to the extent that the impugned judgment qua appellant no. 1 – original accused no. 1 is quashed and set aside and qua appellant no. 2 – original accused no. 2, the same is confirmed. The appellant no. 1 – original accused no. 1 is acquitted from all the charges leveled against him. The appellant no. 1 – original accused no. 1 is in jail and, therefore, the Jail Authority concerned is directed to release the applicant no. 1 – original accused no. 1 from the custody forthwith, if he is not required in connection with any other offence. Office is directed to send the records & proceedings to the trial Court concerned forthwith.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

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